71-1496

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In The

SUPREME COURT of the UNITED STATES

..... Term, 1972

No. .....

CASANOVA GUNS, INC.,

Petitioner,

vs.

JOHN B. CONNALLY, Secretary of the Treasury, and W. A. COLLAWN, Assistant Regional Commissioner, Alcohol, Tobacco & Firearms,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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JOHN B. CONNALLY, Secretary of the Treasury, and W. A. COLLAWN, Assistant Regional Commissioner, Alcohol, Tobacco & Firearms,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner CASANOVA GUNS, INC. prays that a writ of certiorari issue to review the judgment and opinions of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on January 25, 1972, and February 14, 1972.

Citation to Opinion Below

The opinions of the United States Court of Appeals, printed in the Appendix, infra, p. 7a, has not been reported officially in the Federal Reporter as of the printing of this petition. The opinion of the United States District Court is printed in the Appendix, infra, p. 1a.

Jurisdiction

The judgment of the United States Court of Appeals for the Seventh Circuit was entered January 25, 1972. The order of the United States Court of Appeals for the Seventh Circuit denying the petition for rehearing was entered February 14, 1972. The jurisdiction of the Court is invoked pursuant to 28 U. S. C. Sec. 1254(1).

Statutes Involved

26 U. S. C. 5841

Registration of Persons in general

Every person possessing a firearm shall register, with the Secretary or his delegate, the number or other mark identifying such firearm, together with his name, address, place where such firearm is usually kept, and place of busi-

ness or employment, and, if such person is other than a natural person, the name and home address of an executive officer thereof. No person shall be required to register under this section with respect to a firearm which such person acquired by transfer or importation of which such person made, if provisions of this chapter applied to such transfer, importation, or making, as the case may be, and if the provisions which applied thereto were complied with. Aug. 16, 1954, c. 736, 68A Stat. 725.

26 U. S. C. 5851

Possessing firearms illegally

It shall be unlawful for any person to receive or possess any firearm which has at any time been transferred in violation of sections 5811, 5812(b), 5813, 5814, 5844, or 5846, or which has at any time been made in violation of section 5821, or to possess any firearm which has been registered as required by section 5841. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of such firearm, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant explains such possession to the satisfaction of the jury. Aug. 16, 1954, c. 736, 68A Stat. 728; Sept. 2, 1958, Pub. L. 85-859, Title II, Sec. 203(h) (1) (2), 72 Stat. 1428.

18 U. S. C. 922(g)

Unlawful acts

(g) It shall be unlawful for a person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug and Cosmetic Act) or narcotic drug as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any firearm or ammunition in interstate or foreign commerce.

18 U. S. C. 922(h)

Unlawful acts

(h) It shall be unlawful for any person—

(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulating drug (as defined in section 201(v) of the Federal Food, Drug, and

Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U. S. C. 923(d)(1)(B)

Licensing

d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) or (h) of this chapter;

QUESTIONS INVOLVED

1. Whether the incorporation of CASANOVA GUNS, INC. was an incorporation to circumvent the statute restricting issuance of firearms licenses to convicted felons.

2. Whether the holding in *Haynes v. United States*, 390 U. S. 85 (1968) has a retroactive effect upon CASANOVA'S, INC.

STATEMENT OF THE CASE

CASANOVA'S, INC., a Wisconsin corporation engaged in the sporting goods business and gun sale business for approximately 35 years, was, in 1966 indicted in the United States District Court for the Eastern District of Wisconsin of the offense of possession of firearms which had not been registered as required by Title 26 U. S. C. sec. 5841, in violation of Title 26 U. S. C. sec. 5851.

On September 6, 1967, the corporation, by its vice-president, entered a plea of guilty to the charge as charged in the 5 count indictment.

On May 16, 1968, the Honorable District Court for the Eastern District of Wisconsin sentenced the corporation to pay a fine of $100.00 on each of the five counts, the total fine being $500.00.

CASANOVA's was incorporated on September 1, 1959. The principal stockholders of CASANOVA's, INC. were CLARENCE CASANOVA with 347 shares, JOHN P. CASANOVA with 50 shares, PATRICIA CASANOVA JARECKI with 50 shares, SUSAN CASANOVA with 50 shares, and GERALD DEROYSKI with 3 shares.

After entering a plea of guilty in September of 1967 and prior to sentencing in May of 1968, CASANOVA GUNS, INC. was incorporated, and more particularly on March 10, 1967, JOHN P. CASANOVA was the holder of all of the outstanding and issued stock.

On September 2, 1967, CLARENCE CASANOVA, on behalf of CANSANOVA's, INC., applied for a federal firearms license, which was issued.

Subsequently, CASANOVA GUNS, INC. applied for a federal firearms license, and it was issued and the assets of CASANOVA'S, INC. were transferred to CASANOVA GUNS, INC.

An application was then made for a renewal license by CASANOVA GUNS, INC., which renewal license was denied.

Based upon the denial of that application for renewal license, an administrative hearing was held before the hearing examiner of the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service, Department of the Treasury, and the denial of the renewal license was affirmed. This hearing was held pursuant to Title 18 U. S. C. sec. 923(f)(2) and the denial of said license was under the provisions of Title 18 U. S. C. sec. 923 (d).

The matter was then brought into the United States District Court for the Eastern District of Wisconsin, and a trial was held before the Honorable ROBERT E. TEHAN, District Court Judge, and his opinion dated October 16, 1970 is reflected in the appendix to this brief.

The opinion of the Honorable District Court affirmed the previous findings.

The matter was subsequently appealed to the United States Court of Appeals for the Seventh Circuit, and the Honorable Circuit Court of Appeals' opinion and order on motion for rehearing are reflected in the appendix of this brief.

REASONS FOR GRANTING THE WRIT

I.

The Petitioner is of the opinion that the facts do not warrant a denial of its license.

As indicated in the "Statement of the Case," the plea of guilty to the indictment was made on September 6, 1967, and the sentencing on the indictment and plea of guilty took place on May 16, 1968.

While the case was pending, the case of *Haynes vs. the United States,* 390 U. S. 85 was decided by this honorable court. The *Haynes* case was argued on October 11, 1967, which was approximately one month after the defendant in the case at bar entered its plea of guilty; however, the *Haynes* case was decided by this honorable court on January 29, 1968, approximately four months before the sentencing took place.

The *Haynes* case basically provided that a conviction under sec. 5851 Title 26 U. S. C. for possession of an unregistered firearm is not distinguishable from a conviction under 26 U. S. C. sec. 5841 for failure to register possession of a firearm, and both offenses must be deemed subject to any Constitutional deficiencies arising under the Fifth Amendment from the obligation to register.

Petitioner respectfully represents that he has not brought this issue up before the hearing examiner, the trial court or the Circuit Court of Appeals. The Petitioner represents that counsel for said Petitioner on this appeal is not the same counsel that originally represented the corporation in the criminal case.

The *Haynes* case is basically on all fours with the case before the court. It was a situation where in the *Haynes* case the defendant also pled guilty to the violation. The only difference between the *Haynes* case and the case before the court is that in the *Haynes* case the defendant did make a proper claim of the privilege against self-incrimination, but this Petitioner respectfully feels that once the defendant had pled guilty in the *Haynes* case, even though he had made the proper claim of privilege against self-incrimination, it places the present case in the same perspective as the *Haynes* case.

II.

It is interesting to note that in the District Court's opinion, and more particularly, the very last paragraph, we find this statement.

> "This conclusion is reluctant because the penalty of inability to obtain a license and resultant loss of a means of livelihood, imposed for what the record here reveals to be less than a heinous offense, is in our opinion too severe. However, we do not read the Gun Control Act as leaving the court any discretion to alleviate the penalty."

It is further interesting to note in the opinion of the United States Court of Appeals, and more particularly, in the last paragraph, the following:

> "Under the circumstances, although we realize the hardship the denial works upon the CASANOVA enterprises, we find that the commissioner's denial of the application and the District Court's affirmation of that decision were not clearly erronious."

The Government's position in this matter has been very simply stated, to-wit: CASANOVA GUNS, INC. was set up to circumvent the Gun Control Act of 1968 because CASANOVA's, INC. had been previously convicted of a violation of the National Firearms Act and that because of the similarity of officers and directors, CASANOVA's, INC. had the authority to control CASANOVA GUNS, INC.

The record is complete in that the corporate structure of both corporations, although similar in identity, is quite dissimilar in holding. It is clear that the record reflects the stock holdings in the two corporations were different.

The major contention on the part of the Government as followed by both the District Court and the Court of Appeals was the fact that when the second corporation was formed, the first corporation was given a $424,000.00 unsecured note payable on demand; and because the first corporation (a convicted felon) was owed this amount of money, both courts felt that the first corporation possessed a substantial degree of control over the second corporation.

Both courts evidently felt and placed little importance upon the fact that the indictment against JOHN P. CASANOVA, an officer and director of CASANOVA's, INC., was dismissed.

The Congressional purpose of the Gun Control Act of 1968 is as follows:

> "The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms

appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title."

The record is very clear in that upon the denial of this license to the Petitioner, the Petitioner stands to lose in excess of $400,000.00. We do not feel that this was the intent of the Gun Control Act.

The court has disregarded the ruling in *Shamrock Oil & Gas Co. vs. Ethridge,* 159 F. Supp. 693, which held that whether the corporation shall be disregarded depends on questions of fact. It would appear that both of these corporations were distinct entities set up in accordance with legal standards and were operating independently of one another.

CONCLUSION

For the reasons stated herein, Petitioner respectfully represents that the denial of the renewal license to CASANOVA GUNS, INC. is not supported by the evidence because the corporations are two distinct entities and further because the original conviction of CASANOVA's, INC. is not supported by the law or the Constitution of the United States of America.

Respectfully submitted,

JACK J. GIMBEL
SEYMOUR GIMBEL
Attorneys for the Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CASANOVA GUNS, INC.,
a Wisconsin corporation,

Plaintiff,

vs.

No. 69-C-431

DAVID M. KENNEDY,
Secretary of the Treasury, and
W. A. COLLAWN, Assistant Regional
Commissioner, Alcohol, Tobacco
& Firearms,

Defendants.

OPINION

The plaintiff, Casanova Guns, Inc., a Wisconsin corporation, with its principal place of business in this district, seeks judicial review under § 923(f)(3), Title 18 U. S. C. of its application for an importer's license under Title 18 U. S. C. Chapter 44. The application, filed in early 1969, was denied on May 29, 1969 because of the applicant's relationship to Casanova's, Inc., a convicted felon. A hearing on that denial was held pursuant to § 923(f)(2), Title 18 U. S. C. and on September 4th, 1969 findings of fact and conclusions of law upholding the decision to deny the application were made. The petition for review was filed in this court on September 11, 1969, a hearing at which evidence including the administrative record was submitted

was held on April 14, 1970, briefs have been filed, and the court is prepared to render its decision.

Under § 923, Title 18 U. S. C., an application for an importer's license must be approved when certain qualifications are met unless the applicant including, in the case of a corporation, individuals possessing the power to direct or cause the direction of its management and policies, is prohibited from transporting, shipping or receiving firearms or ammunition in interstate or foreign commerce under § 922(g) and (h) of Title 18. The latter sections prohibit convicted felons from shipping, transporting or receiving firearms or ammunition. The question presented here is whether the applicant, Casanova Guns, Inc. is subject to direction in its management and policies by a convicted felon, Casanova's, Inc. The court must make its own independent determination on this question, and the administrative decision is not presumptively correct. *Weidner v. Kennedy*, 309 F. Supp. 1018 (C. D. Calif., 1970).

Casanova's, Inc., is a Wisconsin corporation, formed in 1959, engaged in the business of selling sporting goods. Prior to its incorporation, its president, Clarence Casanova, had been engaged in the same business for a number of years.

The officers of Casanova's, Inc. are and at all times relevant hereto have been, in addition to Clarence Casanova as president, John P. Casanova, son of Clarence, vice-president and secretary, and Patricia Jarecki, daughter of Clarence, treasurer. Those same persons are its directors. Its stockholders and their approximate holdings are Clarence Casanova (350 shares), John P. Casanova (45 shares), Pa-

tricia Jarecki (45 shares), Susan Casanova (45 shares) and Gerald Seroyski (3 shares).

Casanova Guns, Inc. is a Wisconsin corporation dealing in guns and ammunition formed in March, 1967. Its president is John P. Casanova, its vice-president and treasurer Patricia Jarecki, and its secretary, Clarence Casanova. Those persons are also its directors. John P. Casanova is its sole stockholder owning 5 shares of stock. There are 2000 shares authorized but not issued. The corporation's invested capital is $500.00.

Prior to the formation of Casanova Guns, Inc., Casanova's, Inc., was licensed to sell and did sell guns and ammunition, a license which it no longer has. On September 22, 1966, it and John P. Casanova were indicted in this district for violating § 5851, Title 26 U. S. C. The indictment was dismissed against John P. Casanova. Casanova's, Inc. pleaded guilty on September 6, 1967. Sentence was imposed on May 16, 1968. The formation of Casanova Guns, Inc. occurred after the indictment was returned against Casanova's, Inc. but before its conviction.

When Casanova's, Inc. had its license to sell guns and ammunition, this phase of its business was controlled by John P. Casanova who was permitted by his father to "run it pretty well alone." When Casanova Guns, Inc. was formed, John P. Casanova was in complete control of it. Prior to its formation, he devoted about 50% of his efforts to Casanova's, Inc.'s firearms business and the balance to the remainder of Casanova's, Inc.'s sporting goods business but after its formation he worked solely with the business of Casanova Guns, Inc.

Both corporations operate on the same premises, a building owned by Clarence Casanova and his wife[1]. The premises are leased to Casanova's, Inc. for $1500.00 a month and Casanova Guns, Inc. has a sublease, apparently unwritten, for $1000.00 a month which amount is paid not only for rental of space but for light, heat, telephone, services of Casanova's, Inc.'s bookkeeper and help from other Casanova's, Inc.'s employees when necessary. At the time of the administrative hearing, John P. Casanova was the sole employee of Casanova Guns, Inc. He received no salary from that corporation for its fiscal year ending March 31, 1969, but received $32,710.93 salary from Casanova's, Inc. for its fiscal year ending August 31, 1969.

In April, 1969, Casanova's, Inc. transferred its inventory of guns and ammunition, worth approximately $424,000, to Casanova Guns, Inc. at cost, receiving in exchange an unsecured promissory note.[2] John P. Casanova testified that the purchase occurred because his father wished to get out of the firearms[3] business and he wished to get into it on his own but acknowledged that one of the reasons for operating Casanova Guns, Inc. was because Casanova's, Inc., due to its conviction, could not obtain a license.

Clarence Casanova, John P. Casanova and Patricia Jarecki, officers and directors of both companies, all testified at the hearing before this court that John P. Casanova

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[1]It is the intention of John P. Casanova to move Casanova Guns, Inc. to an adjacent building, also owned by Clarence Casanova, if it is granted a license.

[2]The original note was for approximately $279,000 but was increased after an inventory to approximately $424,000. The second note was signed by Clarence Casanova and Patricia Jarecki as officers of Casanova Guns, Inc.

[3]The firearms department of Casanova's, Inc. was its biggest business, constituting over one-half of its retail business.

had complete control over the operations of Casanova Guns, Inc., to the exclusion of Clarence Casanova, principal stockholder of Casanova's, Inc. However, it must be noted that insofar as this record reveals John P. Casanova's only salary was received from Casanova's, Inc., a fact which would tend to influence the manner in which his control would be exercised. It must also be noted that John P. Casanova did not execute the $424,000 note to Casanova's, Inc. from Casanova Guns, Inc.

The same people are officers of both companies and officers other than John P. Casanova, who allegedly controls Casanova Guns, Inc., executed the substantial note from it to Casanova's, Inc. Casanova Guns, Inc., which was formed with an invested capital of only $500.00, is dependent on Casanova's, Inc. for space, light, heat, telephone, bookkeeping, and additional personnel when necessary, all of which are furnished under what appears to be an informal arrangement for a fee which is not shown to be related to the value of the services in any particular month. The allegedly independent controlling officer of Casanova Guns, Inc. receives a substantial salary from Casanova's, Inc. One of the two substantial customers of Casanova Guns, Inc. who testified at the hearing indicated that he was unaware of any distinction between the two corporations.

Although it is true that the record reveals the existence of separate books (kept by the same bookkeeper and C.P.A.), and discloses no commingling of funds, the aforementioned facts convince us that Casanova's, Inc., through its officers, possesses the power to direct or cause the direction of the management and policies of Casanova Guns, Inc. Since Casanova's, Inc. is a convicted felon, it is pro-

hibited from transporting, shipping or receiving firearms under § 922(g) and (h), Title 18 U. S. C. Casanova Guns, Inc. being subject to its direction, is not entitled to approval of its application for a license. The denial of the application was not unauthorized.[4]

Counsel for the defendants will prepare an order in conformity with this opinion and submit it to opposing counsel for approval as to form.

Dated, Milwaukee, Wisconsin, this 16th day of October, 1970.

ROBERT E. TEHAN
U. S. District Judge

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[4]This conclusion is reluctant because the penalty of inability to obtain a license and resultant loss of a means of livelihood, imposed for what the record here reveals to be less than a heinous offense, is in our opinion too severe. However, we do not read the Gun Control Act as leaving the court any discretion to alleviate the penalty.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 71-1096

SEPTEMBER TERM, 1971, SEPTEMBER SESSION, 1971

CASANOVA GUNS, INC.,

Plaintiff-Appellant,

v.

JOHN B. CONNALLY, Secretary of the Treasury, et al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

No. 69-C-431

ROBERT E. TEHAN, *Judge.*

January 25, 1972

Before KERNER, PELL and SPRECHER, *Circuit Judges.**

PER CURIAM. This is an appeal by Casanova Guns, Inc. (Casanova Guns), a Wisconsin corporation, from the denial of its application for renewal of its federal firearms license

*Judge Kerner heard oral argument, but did not participate in the adoption of this opinion.

by the Wisconsin Regional Commissioner of the Treasury Department's Alcohol, Tobacco and Firearms Division. The appellant brought an action in the district court under section 102 of the Gun Control Act of 1968, 18 U. S. C. § 923(f)(3), to review the commissioner's decision not to renew the license. The district court upheld the commissioner's decision.

The license was denied because of Casanova Guns' relationship with Casanova's, Inc. (Casanova's), a convicted felon. The Gun Control Act prohibits the issuance of federal firearms licenses to convicted felons and to companies directed or controlled by convicted felons. 18 U. S. C. § 923(d)(B).[1] Based upon their findings that Casanova's controlled or had the power to control Casanova Guns, the commissioner and the district court found the appellant ineligible for a renewal license. We are asked to review the finding that Casanova controlled Casanova Guns.

An understanding of the commissioner's decision requires an examination of the history of the respective corporations. Casanova's, although incorporated in 1959

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[1]Section 923(d)(1)(B) provides in part:

> (d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—
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> • • •
>
> (B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (h) of this chapter. . . .

Section 922(g) provides, "It shall be unlawful for any person— . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport any firearm or ammunition in interstate or foreign commerce."

by Clarence Casanova, has been in the sporting goods and gun business in Milwaukee for 39 years. The president and major stockholder of Casanova's, Clarence Casanova, held approximately 350 of the 500 shares. Other members of the Casanova family held the remainder of the shares and acted as minor officers in the corporation. In 1966 Casanova's was indicted for the possession of unregistered firearms. Two years later the corporation pleaded guilty and was fined the minimum amount imposed by the statute. That conviction rendered Casanova's ineligible under section 92 for renewal of its federal license.

Casanova Guns was organized in March 1967, subsequent to the indictment of Casanova's but prior to the conviction. The president and sole shareholder of Casanova Guns was John Casanova, Clarence Casanova's son and a shareholder of Casanova's. The other family members, who continued to direct Casanova's, became officers and directors of Casanova Guns. In February 1967 Casanova Guns applied for and received a federal firearms license. After the license was obtained, Casanova Guns took over the first company's entire gun business. Casanova's continued in the general sporting goods business.

On April 16, 1969, Casanova Guns purchased the entire inventory of firearms of Casanova's. In exchange for the inventory, Casanova Guns gave an unsecured promissory note for $424,000. John Casanova ran Casanova Guns in the same building and used the same display area as Casanova's. There was an informal arrangement by which Casanova Guns leased floor space and storage facilities from Casanova's. Separate books and accounts were kept for the two corporations, but John, who considered himself the

sole employee of Casanova Guns, was paid his $32,710 salary by Casanova's.

In January, 1969, Casanova Guns had applied for a renewal of its federal license. That renewal application was refused on May 29, 1969.

The commissioner's finding, a finding substantially similar to that of the district court, was in part as follows:

> . . . [I]nvestigation has established that the applicant's employer, Casanova Guns, Inc., is a corporate successor in interest directly related to a corporation, Casanova's Inc., which is a convicted felon. The business operations of Casanova Guns, Inc., are substantially the same as the operations of its related predecessor. Furthermore, the officers of Casanova Guns, Inc., were the persons responsible for the operations of Casanova's, Inc. Therefore, Casanova Guns, Inc., being a related successor to a convicted felon, is prohibited from receiving, possessing or transporting firearms in commerce or affecting commerce under Title VII of the Omnibus Crime Control and Safe Streets Act of 1968. . . .

Applying the "clearly erroneous" standard, Fed. R. Civ. P. Rule 52(a), to the record before us, we believe that the commissioner's and district court's findings must be upheld.

The appellant urges that Casanova Guns is not a convicted felon and therefore should not be denied a license on the basis of the felon status of Casanova's. That view ignores the express language of the licensing act. The statute explicitly prohibits the issuance of a license to a convicted felon or to a corporation, partnership or association over which a convicted felon exercises or could exercise control. Additionally, it is well settled that the fiction of a corporate entity must be disregarded whenever

it has been adopted or used to circumvent the provisions of a statute. *Anderson v. Abbott,* 321 U. S. 349, 362-63 (1944); *Kavanaugh v. Ford Motor Co.,* 353 F. 2d 710, 717 (7th Cir. 1965); *Joseph A. Kaplan & Sons, Inc. v. F. T. C.,* 347 F. 2d 785, 787-88 (D. C. Cir. 1965); *Ohio Tank Car Co. v. Keith Ry. Equip. Co.,* 148 F. 2d 4, 6 (7th Cir.), *cert. denied,* 326 U. S. 730 (1945).[2]

It is apparent from the record that a substantial purpose for the incorporation of Casanova Guns was the circumvention of the statute restricting issuance of firearms licenses to convicted felons. Casanova Guns was formed after Casanova's was under federal indictment. Indeed, the testimony of John Casanova at the administrative hearing is a reluctant admission that the second corporation was formed to insure the continuation of the gun business.[3]

Further, there is a significant unity of interest between the officers and stockholders of the two corporations and the business operations were closely integrated. The four

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[2]The appellant seeks to avoid the application of these decisions by arguing that the commissioner must establish the applicant's intent to circumvent the Gun Control Act before he can deny it a license by "piercing the corporate veil." We do not believe such a showing is necessary. This court addressed itself to that specific question in *Kavanaugh v. Ford Motor Co., supra* at 717, where we held:

> Intention is not controlling when the fiction of corporate entity defeats a legislative purpose. "The question is whether the parties did what they intended to do and whether what they did contravented the policy of the law."

[3]On two occasions, John Casanova acknowledged that Casanova Guns was formed as a result of the indictment against Casanova's. On the first, responding to a question as to why Casanova Guns was formed, Casanova stated, "Well, at the beginning it was formed because someone told me it was a good idea to have a second license because of the indictment." Later the following colloquy took place:

> Q. Are you now operating Casanova Guns, Inc. only because of the reason that Casanova's Inc. could not obtain a license?
>
> A. It isn't my only reason for operating. It would be one of them.

officers of each corporation were the same, only difference being that Clarence Casanova was the president of Casanova's and John Casanova was the president of Casanova Guns. Casanova Guns operated from the same building as Casanova's and was dependent on Casanova's for light, heat, telephone, bookkeeping and additional personnel when necessary. Casanova's provided these services on an informal "fee" arrangement, but the nature of that arrangement does not destroy the interlocking relationship between the management personnel and practices of the two companies.

In addition, the total assets of Casanova Guns derived from the inventory purchased from Casanova's. That inventory was purchased on a $424,000 unsecured note which is payable on demand. We believe a debt of this nature and magnitude warrants the inference that Casanova's possessed a substantial degree of control over Casanova Guns. That belief is bolstered by the admission of Clarence Casanova that he exercised some control over Casanova Guns in order to protect his investment. That control was made possible by the fact that the two corporations operated out of the same building; also, Clarence Casanova's daughter was the bookkeeper for both corporations.

Under these circumstances, although we realize the hardship the denial works upon the Casanova enterprises, we find that the commissioner's denial of the application and the district court's affirmance of that decision were not clearly erroneous. The decision below is therefore affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

No. 71-1096

FEBRUARY 14, 1972

Before

Hon. WILBUR F. PELL, *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*

CASANOVA GUNS, INC.,

Plaintiff-Appellant,

vs.

DAVID M. KENNEDY, Secretary of the Treasury, et al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

(69 C 431)

IT IS ORDERED BY THE COURT that the petition for rehearing filed in the above entitled cause be and the same is hereby denied.

Judge Kerner participated in the decision of this case but did not participate in the consideration of the petition for rehearing.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1496

CASANOVA GUNS, INC., PETITIONER

v.

GEORGE P. SHULTZ,
SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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1. Petitioner commenced this action in the United States District Court for the Eastern District of Wisconsin to review the administrative decision of the Secretary of the Treasury denying it a renewal license as a gun importer on the ground that petitioner was subject to the direction and control of Casanova's, Inc., a convicted felon. The Gun Control Act, 18

U.S.C. 923, prohibits the issuance of federal firearms licenses to convicted felons and to companies directed or controlled by them.

The record shows that the officers and directors of petitioner and Casanova's, Inc. overlapped; that there was a unity of interest between the officers and stockholders of the two corporations; that petitioner had obtained its entire inventory of firearms from Casanova's, Inc., in exchange for its unsecured promissory demand note of $424,000.00; that petitioner depended on Casanova's, Inc., for space, light, heat, telephone service, bookkeeping and additional personnel when necessary; and that the allegedly independent controlling officer of petitioner received a substantial salary only from Casanova's, Inc. (Pet. App. 11a-12a).

2. The district court (Pet. App. 1a-6a) made its own "independent determination" (Pet. App. 2a) that petitioner was under the direction and control of Casanova's, Inc.; it thus concluded that petitioner was "not entitled to approval of its application for a license" (Pet. App. 6a). The court of appeals, after a detailed re-examination of the facts pertaining to common ownership and control (Pet. App. 10a-12a), sustained the administrative "denial of the application and the district court's affirmance of that decision" (Pet. App. 12a). The factual question of the relationship of the two corporations has thus been fully resolved adversely to petitioner by the Secretary and by both courts below. There is no cause for further review by this Court. *Berenyi* v. *Immigration*

Director, 385 U.S. 630, 635; *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1972.

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[1] Petitioner's attempt to attack collaterally the felony conviction of Casanova's, Inc. is not properly before this Court. As petitioner acknowledges (Pet. 9), this issue was not raised "before the hearing examiner, the trial court or the Circuit Court of Appeals."

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